

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 UNITED STATES OF AMERICA,)	
)	
4 Plaintiff,)	Case No. 2:15-cv-01743-MMD-NJK
)	
5 v.)	ORDER DETERMINING LEGAL
)	VALIDITY OF TAKING AND STRIKING
6 400 ACRES OF LAND, MORE OR LESS,)	IMPROPER DEFENSES
7 SITUATE IN LINCOLN COUNTY, STATE OF)	
NEVADA; and JESSIE J. COX, <i>et al.</i> ,)	
)	
8 Defendants.)	

9 This is a federal eminent domain proceeding to condemn property for the purpose of operating
10 the Nevada Test and Training Range, a military test and training facility at Nellis Air Force Base.
11 Plaintiff United States of America initiated this case by filing a Complaint in Condemnation [ECF
12 No. 1], to which several Defendant-Landowners jointly filed an Answer [ECF No. 53] setting forth
13 their objections, defenses, challenges and responses. Pending before the Court are the United States’
14 Combined Motion for Summary Judgment on the United States’ Authority to Condemn and Motion
15 to Strike Improper Defenses and Immaterial Matters [ECF No. 54], the Defendant-Landowners’
16 Opposition [ECF No. 59], and the United States’ Reply [ECF No. 66]. Having considered the
17 pleadings and hearing the arguments of counsel, and for good cause shown, it is hereby ORDERED:
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19

- 20 ▪ The United States’ Motion for Summary Judgment on the United States’ Authority to
21 Condemn is **GRANTED**. This taking is for a congressionally authorized public use identified
22 in the United States’ Complaint [ECF No. 1-3], and is legally valid; and this Court has
23 jurisdiction over all relevant matters in this proceeding under 28 U.S.C. § 1358.
- 24 ▪ The United States’ Motion to Strike is **GRANTED** with respect to the affirmative defenses
25 raised by the Defendant-Landowners in their Answer [ECF No. 53]. The defenses of laches,
26 waiver and failure of consideration do not apply in federal condemnation proceedings.

- 1 ▪ The United States' Motion to Strike is ***DENIED*** with respect to remaining matters. The
2 remaining objections, demands and responses in the Defendant-Landowners' Answer [ECF
3 No. 53] do not affect the legal validity of the taking and need not be addressed by the Court at
4 this time.

5
6 DATED: October 4, 2016



UNITED STATES DISTRICT JUDGE

8
9 *Respectfully submitted by:*

10 **UNITED STATES OF AMERICA**

11
12 DANIEL G. BOGDEN
United States Attorney
District of Nevada
13 TROY K. FLAKE
14 Assistant United States Attorney

15 /s/ Georgia Garthwaite
16 GEORGIA GARTHWAITE

17 /s/ Johanna Franzen
18 JOHANNA FRANZEN

19 Trial Attorneys
U.S. Department of Justice

20 Attorneys for Plaintiff United States

21
22 *Approved as to content and form:*

23
24 **LAW OFFICES OF KERMIT L. WATERS**

25 /s/ Autumn Waters
26 KERMIT L. WATERS
JAMES JACK LEAVITT

MICHAEL A. SCHNEIDER
AUTUMN WATERS

Attorneys for Defendant Sheahan Landowners

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CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2016, I served the foregoing proposed order on all parties who have appeared in this action using the Court's case management/electronic case filing system. In addition, I hereby certify that on September 19, 2016, I caused a copy of the foregoing proposed order to be sent via U.S. mail to the following parties:

Lincoln County
c/o Daniel Hooe, District Attorney, Lincoln
181 North Main Street, Suite 203
P.O. Box 60
Pioche, NV 89043

Sandra Sears-Lavallee
4729 San Rafael Avenue
Las Vegas, NV 89120-1676

Patricia Fern Sears
P.O. Box 71
Pioche, NV 89043-0071

John B. Sheahan
c/o Michael W. Sheahan
6717 Rolling Meadows
Drive #916
Sparks, NV 89436-0106

Deborah Lynn Sheahan
4662 Gabriel Drive
Las Vegas, NV 89121

/s/ Georgia Garthwaite
GEORGIA GARTHWAITE